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State Corporation Commission

CHAPTER 200.

PAYDAY LENDING.

10 VAC 5-200-10. Definitions.

A. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Payday Loan Act (§ 6.1-444 et seq. of the Code of Virginia).

"Bureau" means the Bureau of Financial Institutions.

["Business day" for purposes of clause 1(vi) of § 6.1-459 of the Code of Virginia means a day on which the licensee's office is open for business as posted as required by subsection A of 10 VAC 5-200-70.]

"Commission" means the State Corporation Commission.

"Duplicate original" for purposes of subdivision 2 of § 6.1-459 of the Code of Virginia and this chapter means an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of clause 1(vi) of § 6.1-459 of the Code of Virginia and this chapter means a certified check, cashier's check, money order[7] or[, if the licensee is equipped

to handle such payments,] payment effected by use of a debit or credit card.

"Liquid assets" for purposes of the Act and this chapter means cash on hand and in depository institutions, money market funds, commercial paper, and treasury bills.

"Small" as used in the definition of "payday loan" in § 6.1-444 of the Code of Virginia, means \$2,500 or less.

B. Other terms used in this chapter shall have the meaning set forth in § 6.1-444 of the Act.

10 VAC 5-200-20. Requirements for licensees; operating rules.

A. A licensee shall maintain unencumbered liquid assets per place of business in Virginia of at least \$25,000 at all times. The bureau may require submission of proof of maintenance of such liquid assets at any time.

B. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

C. Each original license shall be prominently posted in each place of business of the licensee. In order for a licensee to receive a replacement or reissued license, a licensee shall pay a fee of \$50 per place of business to the commission. Licenses will only be replaced or reissued if the licensee is in compliance with

all laws and regulations applicable to the conduct of the licensee's business.

D. If a person has filed a bond with the bureau, as required by § 6.1-448 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended[,] or revoked;
or

2. The person ceases engaging in business as a payday lender.

E. Upon becoming licensed, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

10 VAC 5-200-30. Notice and payday lending pamphlet.

A. Before entering into a payday loan transaction, a licensee shall provide each prospective borrower with a pamphlet which explains the borrower's rights and responsibilities. This pamphlet shall use the exact language appearing in the "Payday Lending Pamphlet" set forth in [~~10 VAC 5-200-60~~ 10 VAC 5-200-80]. The form shall be printed or typed without alteration separate from all other papers or documents obtained by the licensee in type of size not less than that known as [~~10~~ 12] point. The title of the pamphlet ("Payday Lending in the Commonwealth of Virginia[~~7~~ -] Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice

from Lender," "Limitations on Security Interest," etc.) shall be in bold-face print or type.

B. Prior to ~~[disbursing loan funds to a borrower]~~ furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification], a licensee shall provide each [prospective] borrower with a printed notice which states the following: "WARNING: A payday loan is not intended to meet long-term financial needs. It is recommended that you use a payday loan only to meet occasional or unusual short-term cash needs."

1. The notice and acknowledgement shall be printed or typed on 8-1/2 x 11 paper without alteration, be separate from all other papers or documents obtained by the licensee, and be in type not less than that known as 24 point. The notice must also contain an acknowledgement stating the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Payday Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities."

2. The notice must be signed and dated by each [prospective] borrower. A duplicate original of the acknowledged notice shall be kept in the separate loan file maintained with respect to the loan for the period specified in § 6.1-453 of the Code of Virginia.

10 VAC 5-200-40. Borrower prepayment.

A. In order to prepay a payday loan [in full], a borrower shall only be required to pay the principal amount advanced as well as any accrued and unpaid fees. [A borrower shall be permitted to make partial payments, in increments of not less than \$5.00, on the loan at any time without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.]

B. For purposes of the Act and this chapter, interest and fees will be deemed "accrued" on a straight line basis over the term of a payday loan.

~~[Accordingly, a~~ 1. A] borrower choosing to prepay his payday loan [in full] shall only be responsible for the pro-rata portion of the total interest and fees based upon the number of days which have elapsed between the loan disbursement date and the date of repayment. (For example, if a \$400 loan with fees of \$60 and a term of 10 days is prepaid [in full] after five days, the borrower shall only be required to pay in cash or good funds instrument \$430 (\$400 + \$30) to the licensee.)

[2. A borrower choosing to make partial payments shall only be responsible for the pro-rata portion of the total interest and fees based upon the timing and amount of such partial payments. (For example, given a \$500 loan with fees of \$75 and a term of 10 days, a borrower making a partial payment of \$200 after five days shall only be required to pay a total of \$562.81 to the licensee

(\$500 principal + \$62.81 interest (\$500 for five days = \$37.50, plus \$337.50 for five days = \$25.31)). In this example, \$37.50 of the borrower's \$200 partial payment would be applied toward interest and the remaining \$162.50 would be applied toward principal, thereby resulting in an outstanding balance of \$337.50 until maturity.)]

10 VAC 5-200-50. Responding to requests from the Bureau of Financial Institutions.

A. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances.

B. Requests made by the bureau pursuant to subsection A are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § 6.1-456 of the Code of Virginia. Failure to comply with subsection A may result in fines, license suspension, or license revocation.

[10 VAC 5-200-60. Posting of charges.

A. A licensee shall conspicuously post in its licensed location a schedule of fees and interest charges, with examples using a \$300 loan payable in seven days, 14 days, and 30 days.

B. A licensee shall display its fees and interest charges not only as a dollar amount, but also as an Annual Percentage Rate, which shall be stated using this term, calculated in accordance with Federal Reserve Board Regulation Z (12 CFR 226.1 et seq.).

10 VAC 5-200-70. Additional business requirements and restrictions.

A. A licensee shall conspicuously post in its licensed locations the days and hours during which it is open for business.

B. A licensee shall not deposit or otherwise present for payment more than two times any check given by a borrower as security for a loan, and in no event shall a licensee recover from a borrower more than a total of \$25 attributable to returned check fees incurred by the licensee with respect to a single check.

C. A licensee shall not accept or require an allotment of military pay or any authorization of electronic funds transfer as security for repayment of a loan.

D. A licensee shall maintain in its licensed offices such books, accounts, and records as the Commissioner of Financial Institutions may reasonably require in order to determine whether such licensee is complying with the provisions of the Act and all rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved. Such records relating to loans shall be retained for at least three years after final payment is made on any loan.

E. A licensee shall report, in accordance with § 6.1-455 of the Code of Virginia, the institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia) by the Attorney General or any other governmental authority.

F. A licensee shall endeavor to provide the loan documents, printed notice, and pamphlet required by 10 VAC 5-200-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.]

[~~10 VAC 5-200-60~~ 10 VAC 5-200-80]. Payday lending pamphlet text.

The required text of the payday lending pamphlet referred to in 10 VAC 5-200-30 is as follows:

PAYDAY LENDING IN THE COMMONWEALTH OF VIRGINIA

BORROWER RIGHTS AND RESPONSIBILITIES

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your ~~[right~~ rights] and responsibilities in connection with obtaining a payday loan in Virginia under the Payday Loan Act, ~~[§§ §]~~ 6.1-444 et seq. of the Code of Virginia. If you have any questions about payday lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the internet at <http://www.state.va.us/scc/division/banking>. The Bureau of Financial Institutions has available a "Consumer Guide to Payday Lending" which may be viewed at this website or obtained by calling the toll-free telephone number listed above.

In General: You are responsible for evaluating whether a payday loan is right for you. Alternatives may ~~[includes~~ include among other things,] less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, an account with overdraft protection, or a loan repayable over several months.

Notice from Lender: The lender is required to provide you with a clear and conspicuous printed notice advising you that a payday loan is not intended to meet long-term financial needs and that

you should use a payday loan only to meet occasional or unusual short-term cash needs.

Limitations on Security Interest: The lender cannot require you to provide more than one check as security for any payday loan. The check cannot be post-dated. The lender cannot require you to provide any security for your payday loan other than a check payable to the lender.

\$500 [~~Maximum/7~~ Maximum/Seven] Day Minimum Term: The lender cannot [~~lend~~ have loans (either single or in the aggregate) outstanding to] you [at any one time in the principal amount of] more than \$500. By law, the specified due date of your loan must be at least seven days after the date that money is advanced to you.

Fees, Charges, and Interest: The lender is permitted to charge you interest in the form of a fee not exceeding 15% of the amount of money advanced to you (i.e., \$15 per \$100 advanced). For example, if the lender advances you [~~\$500 (the maximum amount allowed)~~ \$300 for 7 days], the lender may charge you up to [~~\$75~~ \$45] as a fee for obtaining the loan [(an Annual Percentage Rate of 782%). If the lender advances you \$300 for 14 days, the lender may charge you up to the same \$45 fee for obtaining the loan (an Annual Percentage Rate of 391%). If the lender advances you \$300 for 30 days, the lender may charge you up to the same \$45 fee for obtaining the loan (an Annual Percentage Rate of 183%)]. [~~No~~

Other than the specific fees and costs discussed in the section of this pamphlet entitled "Failure to Repay" (see below), no] additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered [by the lender]. You will receive your loan proceeds in the form of either cash or a check from the lender. The lender cannot charge you a fee for cashing their check. Similarly, a check casher affiliated with the lender cannot charge you a fee for cashing the lender's check.

Written Agreement: The lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the lender. The loan agreement is a binding, legal document which requires you to repay the loan. Make sure you read the entire loan agreement carefully before signing and dating it. The lender must provide you with a duplicate original of the loan agreement at the time of your loan transaction.

[Other Businesses: A lender is prohibited by statute from engaging in other businesses, besides check cashing, unless permitted by order of the State Corporation Commission. A lender is also prohibited by statute from selling you any type of insurance coverage.]

[Cannot Purchase Loans for] Other Products & Services: You are prohibited from using any of the money from your payday loan to purchase any other product or service sold at the lender's business location.

Right to Cancel: You have the right to cancel your loan at any time prior to the close of business on the next ~~[business]~~ day [the lender is open] following the date your loan is made by paying the lender the amount advanced to you in cash, certified check, cashier's check, ~~[or]~~ money order~~[,]~~ or[, if the lender is equipped to handle such payments,] by using a credit or debit card. ~~[For example, if you obtain a loan on a Friday, you have until the close of business on the following Monday to cancel your loan (assuming that neither Friday nor Monday are federal holidays)-.]~~

Partial Payments and Prepayments: You have the right to make partial payments (in increments of not less than \$5.00) on your payday loan at any time without charge. [If you make a partial payment, the total interest you pay will be reduced.] You have the right to receive signed, dated receipts for each payment made along with a statement of the balance remaining on your payday loan. You also have the right to prepay your loan in full before its specified due date without penalty by paying the lender in cash, certified check, cashier's check, ~~[or]~~ money order~~[,]~~ or[, if the lender is equipped to handle such payments,] by use of a credit or debit card, the amount of money advanced to you as well as any accrued and unpaid fees.

No Rollovers, Extensions, Etc.: The lender cannot refinance, renew, extend, or rollover your payday loan.

Failure to Repay: Pay back your loan! Know when your payment is due and be sure to repay your loan on time and in full. You are responsible for having sufficient funds in your checking account on the due date of your loan so that your check does not bounce if the lender deposits it in his account. If you do not repay your loan by the specified due date, the lender may begin accruing interest [on the unpaid balance] at a maximum rate of 6% per year. The lender is prohibited from threatening or beginning criminal proceedings against you if a check you provide to the lender bounces.

If you cannot or do not repay the loan: (i) the lender is permitted to recover from you any fee charged to the lender (maximum of \$25) as a result of your check being returned due to your account being closed by you or containing insufficient funds, or if you stopped payment on your check; and (ii) if the lender seeks and obtains judgment against you as a result of your returned check, the lender may obtain court costs and reasonable attorney's fees (total may not exceed \$250) if such costs and fees are awarded by the court.

Legal Action Against Lender: You have the right to ~~sue~~ bring a civil action against the lender if you suffer a loss as a result of the lender violating any provision of the Payday Loan Act. If you are successful in your ~~lawsuit~~ civil action, you have the right to be reimbursed for reasonable attorney's fees, expert

witness fees, and court costs you have [~~paid~~ incurred] in
connection with [~~the lawsuit~~ your civil action]. Losses suffered
as the result of the lender's violation of the Payday Loan Act may
also be pursued under the Virginia Consumer Protection Act
(~~[\$5-59-196~~ § 59.1-196] et seq. of the Code of Virginia)[, which
in some cases permits consumers to recover actual and punitive
damages].

Complaints and Contacting the Bureau of Financial Institutions:

For assistance with any complaints you may have against a payday
lender, please contact the Bureau of Financial Institutions [~~toll-~~
~~fee~~ toll-free] at (800) 552-7945 or on the internet at
<http://www.state.va.us/scc/division/banking>.